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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.P., a Person Coming Under the  
Juvenile Court Law

B214621

Grandmother,

(Los Angeles County  
Super. Ct. No. BK01930)

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES  
COUNTY,

Respondent.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Real Party In Interest.

ORIGINAL PROCEEDING. Petition for Extraordinary Writ. Donna Levin,  
Referee. Petition Denied.

John Cahill, under appointment by the Court of Appeal, for Petitioner.

Raymond G. Fortner, Jr., County Counsel, Jacklyn K. Louie, Senior Deputy  
County Counsel, for Real Party in Interest Los Angeles County Department of Children  
and Family Services.

Children's Law Center of Los Angeles, Jessica Paulson, for Minor K.P.

Grandmother A.P. petitions for an extraordinary writ pursuant to Welfare and Institutions Code section 366.28<sup>1</sup> contending that the dependency court abused its discretion in removing her grandson K.P. from his preadoptive placement in her home. We deny the petition.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Filed August 31, 2005, the Department's petition alleged that in August 2005, K.P. was born with a positive toxicology screen for cocaine and had tested positive for syphilis. K.P.'s mother had an 18-year history of substance abuse and was a frequent user of cocaine. She had failed numerous court-ordered substance abuse rehabilitation programs, and Mother's parental rights to three of K.P.'s siblings had been terminated; these children had been adopted by their maternal Grandmother, A.P.<sup>2</sup> K.P. was detained and placed with Grandmother. The Department did not recommend reunification services for Mother.

At the August 31, 2005 detention hearing, the court ordered monitored visitation for Mother, and denied reunification services pursuant to section 361.5, subdivision (b) (10), (11), and (13). Grandmother indicated that she would consider adopting K.P.

At the September 30, 2005 hearing, the court sustained the petition. The court continued the matter for a selection and implementation hearing pursuant to section 366.26, and ordered the Department to obtain K.P.'s birth certificate and complete a home study and adoption progress report.

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<sup>1</sup> All statutory references herein, unless otherwise noted, are to the Welfare & Institutions Code.

<sup>2</sup> Mother had a total of six children, four of whom had been the subject of dependency proceedings. K.P.'s siblings R.B. (born 1988), B.B. (born 1990), B.S. (born 1993), K.P. (born 1997) and Baby Girl P. (born 2003) had all been born with positive toxicology screens for cocaine. Baby Girl P. died at age 10 days. B.B., B.S., and K.P. were adopted by Grandmother and their cases terminated. R.B. had an open probation case and was in a guardianship.

In its report for the January 26, 2006 hearing, the Department reported that it had not completed the home study due to its inability to meet with Grandmother. The Department observed a strong bond between K.P. and his Grandmother. At the hearing, the court ordered the Department to complete the home study, and trailed the matter to February 2, 2006.

Over the course of the next three months, the matter was continued numerous times to permit completion of the home study. On February 2, 2006, March 10, 2006, March 30, 2006, and April 17, 2006, the Department reported the home study was not approved because Grandmother had not completed the paperwork. The court repeatedly ordered completion of the home study and adoption assessment.

The report prepared for the May 4, 2006 hearing indicated that K.P. was developing normally and did not qualify for any Regional Center Services.

The Department's section 366.26 report stated that Grandmother considered K.P. to be a member of her family and wanted to adopt him. The home study was almost complete, pending receipt of school records for Grandmother's other three adopted children. At the May 4, 2006 hearing, the court terminated Mother's parental rights to K.P., and advised the Department to request acknowledgment of termination of parental rights from the state.

During the finalization of K.P.'s adoption, the Department learned that his birth certificate erroneously listed his date of birth, and was unable to proceed with the adoption. The Department expected to receive the corrected birth certificate in 10 months. On December 18, 2007, the Department received a corrected birth certificate for K.P.

In its report prepared for the January 23, 2008 progress hearing, the Department advised that on January 15, 2008, the social workers made an unannounced visit to Grandmother's house and found that Mother's eldest daughter, R.B., was visiting and caring for the children because Grandmother was not at home. Upon returning to the office, the social worker learned that R.B. had an extensive history of drug use, including testing positive for cocaine while pregnant; R.B.'s three children have been detained.

R.B.'s address on file with the Department was Grandmother's house, indicating that she was residing in K.B.'s prospective adoptive home. An emergency response referral was generated, but the results were inconclusive.

The court set a new section 366.26 hearing for May 21, 2008 at the Department's request.

On May 20, 2008, the Department filed a notice of intent to remove K.P. from Grandmother's home. Grandmother's home no longer had AFSA<sup>3</sup> clearance because the Department had not obtained criminal record clearance on her adult daughter C.P., who was also residing in the home. Grandmother objected to the removal, contending that her daughter lived in another apartment on the same property. The court set a contested hearing on the matter for June 2, 2008.

The Department's report stated that the social worker had approved the adoptive home study on May 4, 2006. However, because the adoptive placement had not yet been made, the Department was required to comply with the ASFA removal. Further, the Department had made Grandmother aware in March 2008 and numerous times thereafter that her adult daughter and her boyfriend (who lived with her) needed to live scan. In May 2008, the Department obtained the results of the daughter's live scan, which reflected two criminal hits; the hits would need to be waived for the Department to approve the home.

A referral generated May 1, 2008 alleged general neglect after a social worker visiting the home encountered the electric company attempting to terminate power to the house due to lack of payment. Another social worker visiting the home reported that K.P. was swearing and threatening to kill the social worker. A week later the social worker again visited and found an adult woman in the home who did not identify herself and who appeared to be under the influence.

The Department's report also noted Grandmother's lack of parental control and boundaries with the children in her care. The oldest adoptive daughter in the home was

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<sup>3</sup> Adoption and Safe Families Act, 42 U.S.C. §670, et seq. (Pub. L. No. 105-89 (Nov. 19, 1997) 111 Stat. 2115.)

17 years old, had not been attending school on a consistent basis, and lied about her school being closed. The 14-year-old adoptive daughter had been arrested for carrying a concealed weapon on campus, was placed on house arrest for two months and then expelled. Currently, the girl was on probation and required to maintain satisfactory grades, attendance and citizenship. However, during the past three months, the girl had only attended school a total of six days and was failing two of her classes. The 10-year-old adoptive son's school reported that he could excel, but he had excessive tardies to class.

K.P. was developing on target. However, his front teeth were decaying because he ate too many candies and sweets. The Department recommended he be removed from the home because Grandmother was not providing a safe and stable environment, and that she did not understand child safety and lacked the ability to provide boundaries for K.P. The Department recommended that K.P. be detained, remain a dependent of the court, with a permanent plan of adoption.

The Department's report prepared for the June 17, 2008 hearing indicated that on June 13, 2008, the social worker made a home visit to provide referrals for counseling, parenting classes, and information on vouchers for food and clothing. Grandmother thought it was "too far" to go for counseling.

At the June 17, 2008 hearing, Grandmother requested that K.P. remain in her home with conditions because there was no evidence of risk to him. The court found it was in K.P.'s best interests to remain in Grandmother's home because he had been with her since birth. The court ordered Grandmother to: (1) have her adult daughter live scan within one week; (2) obtain a waiver of the daughter's criminal convictions within two weeks; (3) provide proof of current auto insurance and homeowner's insurance within a week; (4) participate in family preservation services, including completion of a parenting program, and (5) obtain a full physical examination within six weeks; and (6) enroll K.P. in a head start or preschool program at age three. The court designated Grandmother as K.P.'s prospective adoptive parent.

The Department's July 29, 2008 report stated that it had not received Grandmother's adult daughter's live scan; Grandmother's auto insurance was reinstated on June 3, 2008; on July 15, 2008, a meeting was held, at which time Grandmother was offered in-home counseling once a week, mental health services, including individual therapy for Grandmother and family therapy, substitute adult role model program for K.P., and transportation to the programs. Further, on June 25, 2008, Grandmother had begun a parenting program; her physical exam was in progress; and K.P.'s enrollment in a head start program was in progress.

At the July 29, 2008 hearing, the Department noted that Grandmother had failed to attend the hearing, even though she had been ordered to do so. Further, Grandmother was "barely in compliance" with the court's orders. The matter was continued to August 19, 2008.

The Department's report prepared for the August 19, 2008 hearing stated that Grandmother's adult daughter had a 2004 conviction for DUI for which she was given 60 months probation and 17 days in jail. On August 11, 2008, the Department conducted an in home face-to-face visit with Grandmother and gave her the paperwork for obtaining a waiver of her daughter's criminal background. The Department informed the court of the importance of making unannounced home visits, but it was unable to do so because the gates at the home were locked. Grandmother agreed to leave the gates unlocked during the day. The matter was continued to September 25, 2008.

The Department's September 25, 2008 report indicated that K.P. had received a psychological evaluation. The psychologist had concluded that Grandmother's home provided inappropriate developmental modeling and generated inappropriate peer social interactions, which would likely continue his trajectory of maladaptive behaviors if significant changes were not provided immediately. The psychologist's report noted that Grandmother fed K.P. a donut and popsicle at 10 a.m.; shortly thereafter, K.P. experienced a sugar crash and began to run around the home and "literally bounce into the walls." This behavior pattern was affirmed to be typical; Grandmother indicated that she did not let K.P. play outside or at the park due to safety concerns. During the

psychologist's visit, when K.P. was not allowed to do what he wanted, he became physically and verbally angry, telling the psychologist to "shut up" and not to talk to him, and to "get out of my house bitch, stop messing with me." No family member disapproved of this behavior. They told the psychologist that K.P. would break glass objects when he did not get his way. In the psychologist's opinion, K.P. met the diagnostic criteria for conduct disorder, severe childhood onset type.

The psychologist recommended that K.P. attend a full-day preschool program for his age group, receive comprehensive psychological evaluations following a year of attendance in school, continue individual counseling and therapy with Grandmother, with the social worker to continue monitoring all services provided to Grandmother and the family.

At the hearing, the court continued to matter and ordered the Department to prepare a supplemental report addressing mental health issues.

On October 3, 2008, the Department filed a second notice of intent to remove. The Department's report stated that the social worker's report from Mental Health Services indicated that although K.P. was attached to his Grandmother and she was affectionate to him, her response to K.P. was passive, and she had no influence over his behaviors. The home was significantly devoid of age-related stimulation and positive modeling. Without drastic improvements, K.P.'s maladaptive behaviors would continue and escalate into a serious behavior disorder. Even with extensive services, it would be difficult to mitigate the negative effects of K.P.'s home environment. Further, despite the services provided over the past six months (including adoption and promotion support services, a psychological assessment of K.P., and the offering of family preservation services), very little progress had been made.

At the October 15, 2008 hearing on the removal petition, the Department requested that pending a contested hearing, K.P. be removed from the home. The court noted that the Department had provided an abundance of services, but that removal was in K.P.'s best interests, and ordered him removed from the home pending a contested

hearing. Grandmother was given monitored visitation three times a week. The matter was set for contested hearing on November 14, 2008.

The Department appeared in court on November 10, 2008, advising the court that the social worker had terminated Grandmother's visitation. The Department's report noted that at one of the visitations, Mother had been present; when asked to leave, she caused a scene. Grandmother was passive during the disturbance. Grandmother had brought a niece along, but when advised that only Grandmother and the siblings in her care were appropriate for visits, the niece remarked, "I ain't listening to her, whatever, I'm staying." Grandmother brought donuts to the second visit, and received six phone calls, one of which was from Mother.

The Department believed that the current visitation order was counterproductive because K.P. was not able to separate from his Grandmother and siblings, and K.P. believed his current placement was only temporary and that he would be going back to Grandmother's home. The current caregiver stated that K.P. was unable to appropriately detach from his family and that she did not believe she could continue as a foster placement.

The court stated that it felt that Grandmother needed to be a part of K.P.'s life, and granted her once a week visitation, admonishing her not to bring sugary foods to the visits.

The Department's report prepared for the November 14, 2008 hearing stated that K.P. had been placed in a resource family home. However, once K.P. began visiting with his family, the placement began to unravel. The Department interviewed several of K.P.'s relatives regarding prospective adoption, but found none of them suitable. At a visit with a prospective adoptive parent on November 13, 2008, Grandmother brought K.P. sweets and a honey bun. She did not bring toys, and the visit centered on Grandmother eliciting kisses from K.P. K.P. used foul language and demanded that the prospective adoptive parent call his sister for him.

At the hearing, the social worker testified that Grandmother only made one visit to family preservation services. The social worker was unable to establish contact with



Grandmother, and asked for family preservation services at a family meeting in July. In October, K.P. began attending a daycare through his current caregiver. She does not believe K.P. should be returned to Grandmother

Josephine Chung, a licensed clinical social worker, testified that she visited with the family. K.P. was irritated with her when she set limits. Although Chung does not make placement recommendations with respect to dependency proceedings, she recommended therapy for K.P. She believed visitation should be stopped for about six weeks to give K.P. some time to adjust to his new placement. In response to a question whether Grandmother should be allowed to visit, she responded, “There needs to be closure if the adoption is going to proceed, and the message needs to be clear. Whatever the court decides, it needs to be clear that this will be an adoptive home. The adoption will go through and [K.P.] will have a new family. That needs to be clear. And [K.P.] needs to have an opportunity in a therapeutic setting to say goodbye to his biological family.”

She observed that K.P. was very attached to his 10 year old brother.

Grandmother testified that she has had K.P. and his siblings in her home since they were infants. She claimed she put K.P. in school herself. She took him to see his therapist every week.

Kim Brown Porter, the psychologist, testified that she had been working with K.P. since June 2008 on a weekly basis. She has seen K.P. in his current placement and his problematic behaviors have been reduced. K.P. exhibits less aggression, noncompliance, and he seemed happy and bonded.

The court found that Grandmother was not capable of doing what needed to be done in caring for K.P. The court ordered K.P. removed from her home, and ordered no visitation until mid-December, at which time visitation could resume. Visitation was to start in a therapeutic setting with the psychologist.

Grandmother filed her notice of appeal on November 18, 2008. Although Grandmother erred in not challenging the order by filing a notice of intent to file writ petition pursuant to California Rules of Court, rule 8.454, subdivision (e), because her

notice of appeal was filed within the seven-day time period of rule 5.540, subdivision (c), we treat her notice of appeal as a properly filed notice of intent under Rule 8.454.<sup>4</sup>

## DISCUSSION

Grandmother, who is K.P.'s prospective adoptive parent, contends the dependency court abused its discretion in removing K.P. from her home. She contends she complied with the court's orders made June 17, 2008, after it determined it was in K.P.'s best interests to remain in her home, and no family preservation services were ever provided. The Department contends the dependency court ordered an abundance of services designed to keep K.P. with Grandmother, and that such services were sufficient.<sup>5</sup>

When a petition for removal under section 366.26, subdivision (n) is filed, the dependency court must conduct a hearing.<sup>6</sup> At that hearing, the court must determine whether the caretaker has met the criteria to be designated as a prospective adoptive parent pursuant to section 366.26, subdivision (n)(1), and whether the removal of the child from the prospective adoptive parent's home is in the child's best interests; a child may not be removed from the home of a prospective adoptive parent unless it is in the

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<sup>4</sup> Rule 8.454 governs "writ petitions to review placement orders following termination of parental rights entered on or after January 1, 2005." (Rule 8.454(a).) Under rule 8.454 subdivision (e)(4), "The notice [of intent] must be served and filed within 7 days after the date of the post termination placement order or, if the order was made by a referee not acting as a temporary judge, within 7 days after the referee's order becomes final under rule 5.540(c)." Under rule 5.540(c), a referee's order becomes final "10 calendar days after service of a copy of the order and findings under rule 5.538 . . . ."

<sup>5</sup> K.P. joins in the Department's arguments.

<sup>6</sup> At the outset, we find Grandmother has standing to challenge the dependency court's order. Section 366.26, subdivision (n) governs the removal of a dependent child from a prospective adoptive home, and provides that "the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child: . . ." (§ 366.26, subd. (n)(3)(A); see also *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1341-1343 (*Wayne F.*)[notwithstanding provisions of section 366.26, subdivision (n)(3)(C) limiting standing of prospective adoptive parent in other contexts, prospective adoptive parent has standing to challenge removal order].)

child's best interest to do so. (§ 366.26, subd. (n)(3)(B); *Wayne F.*, *supra*, 145 Cal.App.4th at pp. 1339-1340.)

In determining the child's best interests, the dependency court must consider the child's current circumstances. (*State Department of Social Services v. Superior Court* (2008) 162 Cal.App.4th 273, 287.) The concept of the child's best interest is "an elusive guideline that belies rigid definition. Its purpose is to maximize a child's opportunity to develop into a stable, well-adjusted adult." (*Adoption of Michelle T.* (1975) 44 Cal.App.3d 699, 704.) A primary consideration is the goal of assuring stability and continuity of care. (*State Department of Social Services v. Superior Court*, *supra*, 162 Cal.App.4th at p. 286.) The dependency court has wide discretion to determine whether the current placement is in the child's best interest. (*Ibid.*)

Here, the evidence established that removal of K.P. was in his best interests. K.P., while on target developmentally, had severe behavioral problems due to Grandmother's inability to set boundaries and monitor his behavior and provide guidelines. He was swearing, threatening the social workers, breaking objects in the home and, as the psychologist expressed it, on a trajectory to severely maladaptive behaviors if significant changes were not provided immediately. Grandmother's home provided no appropriate developmental modeling in the form of age-related stipulation and generated inappropriate peer interactions. Grandmother fed him sweets consistently, which generated a "sugar crash" after which K.P. would run around the house and literally "bounce into the walls." K.P.'s family, including Grandmother, did not disapprove of his swearing and other out-of-control behavior, and Grandmother was incapable of controlling him. On the other hand, K.P.'s behavior in foster care had dramatically improved; he was less aggressive, more compliant, and he seemed happy.

Further, there is no merit to Grandmother's contention that she was provided with inadequate family preservation services. (§ 16501, subd. (j).) On the contrary, the social worker made a home visit to provide referrals for counseling, parenting classes, and information on vouchers for food and clothing. Grandmother made only one visit to family preservation services and thought it was "too far" to go for counseling. The

Department cannot be faulted where there is resistance to services offered where adequate services are provided. (*In re Laura F.* (1983) 33 Cal.3d 826, 839.)

**DISPOSITION**

The petition is denied on the merits.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.